

The Honorable Ricardo S. Martinez

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

PATRICK COLACURCIO, MARIS and
DAVID HANSON, and JAMES McMURCHIE,
individually and on behalf of all others similarly
situated;

Plaintiffs,

v.

INSIGHT VENTURE PARTNERS VII, L.P., a
Cayman Islands limited partnership; INSIGHT
VENTURE PARTNERS (CAYMAN) VII, L.P.,
a Cayman Islands limited partnership; INSIGHT
VENTURE PARTNERS VII (CO-
INVESTORS), L.P., a Cayman Islands limited
partnership; INSIGHT VENTURE PARTNERS
(DELAWARE) VII, L.P., a Delaware limited
partnership; INSIGHT VENTURE PARTNERS
COINVESTMENT FUND II, L.P., a Delaware
limited partnership; INSIGHT VENTURE
ASSOCIATES VII, L.P., a Delaware limited
partnership; INSIGHT VENTURE
ASSOCIATES VII, LTD., a Cayman Islands
limited company; INSIGHT VENTURE
ASSOCIATES COINVESTMENT II, L.P., a
Delaware limited partnership; INSIGHT
VENTURE MANAGEMENT, LLC, a Delaware
limited liability company; INSIGHT HOLDING
GROUP, LLC, a Delaware limited liability
company, and RYAN HINKLE,

Defendants.

NO. 2:20-cv-01856-RSM

FINAL APPROVAL ORDER AND
JUDGMENT

Noting Date: May 11, 2022

1 This matter came before the Court on Plaintiffs' Motion for Final Approval of Class
 2 Action Settlement ("Final Approval Motion"). All capitalized terms not otherwise defined have
 3 the meanings set forth in the Settlement Agreement (Dkt. 92-1) ("Settlement").

4 On December 17, 2021, this Court entered an order granting preliminary approval (the
 5 Preliminary Approval Order") (Dkt. #97), in which the Court preliminarily approved the
 6 proposed Settlement as being fair, reasonable, and adequate to the Settlement Class; preliminarily
 7 certified the Settlement Class; designated Named Plaintiffs and Class Counsel; appointed a
 8 Settlement Administrator; approved the forms and methods of disseminating information about
 9 the Settlement and found them to constitute the best notice practicable under the circumstances,
 10 constitute due and sufficient notice of the matters set forth in the notices to all persons entitled to
 11 receive such notices, and fully satisfy the requirements of due process, Rule 23 of the Federal
 12 Rules of Civil Procedure, 28 U.S.C. § 1715, and all other applicable laws and rules; established
 13 procedures for Class Members to opt out of or object to the Settlement, attorney's fees, and
 14 service awards; established deadlines for the filing of a motion for final approval of the
 15 Settlement and motion for attorneys' fees, costs, and service awards; and scheduled a Final
 16 Approval Hearing for May 11, 2022 during which the Court would determine whether the
 17 Settlement should be finally approved and judgment entered thereon.

18 On January 14, 2022, pursuant to the notice requirements set forth in the Settlement and
 19 Preliminary Approval Order, the Settlement Class was apprised of the nature and pendency of
 20 the Litigation, the terms of the Settlement, and their rights to request exclusion, object, and/or
 21 appear at the Final Approval Hearing.

22 On March 25, 2022, Plaintiff filed a Motion for Final Approval of the Class Action
 23 Settlement (the "Final Approval Motion") and along with supporting declarations and exhibits;

1 and Class Counsel filed their Motion for an Award of Attorneys' Fees and Reimbursement of
 2 Expenses and accompanying declarations from counsel of record in the Litigation setting forth
 3 their time and expenses and related exhibits (the "Fee Application").

4 On May 11, 2022, the Court held a Final Approval Hearing to determine, *inter alia*: (1)
 5 whether the Settlement is fair, reasonable, and adequate; and (2) whether judgment should be
 6 entered dismissing all claims in the Complaint with prejudice. Prior to the Final Approval
 7 Hearing, Class Counsel filed a declaration from the Settlement Administrator confirming that the
 8 Notice Program was completed in accordance with the Settlement and Preliminary Approval
 9 Order. Accordingly, the Court is satisfied that Settlement Class Members were properly notified
 10 of their right to appear at the Final Approval Hearing in support of, or in opposition to, the
 11 proposed Settlement, the award of attorneys' fees, costs, and expenses, and the payment of a
 12 Service Award.

13 Having fully considered and reviewed the proposed Settlement, together with its exhibits,
 14 and based upon the relevant papers and all prior proceedings in this matter, the Court determines
 15 that the proposed Settlement satisfies the criteria for final approval, the proposed Settlement
 16 Class is certified, and the Notice Program is approved. Accordingly, good cause appearing in the
 17 record, Plaintiffs' Motion is **GRANTED**, and the Court hereby **FINDS AND ORDERS THAT:**

18 **Final Approval of the Settlement**

19 1. The Court has personal jurisdiction over the Parties and Settlement Class
 20 Members. This Court has subject matter jurisdiction over this Litigation and over all claims raised
 21 therein and all matters that relate to the Settlement. Venue is proper.

22 2. The Settlement was entered into in good faith following arm's-length negotiations
 23 before an experienced mediator and is non-collusive. Negotiations took place after Class Counsel

1 adequately investigated the claims of the named Plaintiffs and the Settlement Class and became
 2 familiar with the strengths and weaknesses of the claims in the Litigation, and the risks attendant
 3 to continued prosecution of those claims.

4 3. The Settlement is in all respects fair, reasonable, and adequate. The Settlement
 5 offers substantial benefits to the Settlement Class and is in the best interests of the Settlement
 6 Class. The Settlement satisfies Rule 23 of the Federal Rules of Civil Procedure (“Rule 23”). The
 7 Court finds that the Parties faced significant risks, expenses, delays, and uncertainties, including
 8 as to the outcome of continued litigation of this complex matter, which further supports the
 9 Court’s finding that the Settlement is fair, reasonable, adequate and in the best interest of the
 10 Settlement Class.

11 4. The Court grants full and final approval of the Settlement, as reflected in the
 12 Settlement Agreement, including but not limited to the releases and the plan for allocation and
 13 distribution of the Settlement funds as provided in the Settlement Agreement. As the Court finds
 14 that the Settlement is, in all respects, fair, reasonable, and in the best interest of the Settlement
 15 Class, all Settlement Class Members who have not opted-out are bound to the Settlement and
 16 this Final Approval Order and Judgment. The Parties are directed to effectuate the Settlement in
 17 accordance with the terms of the Settlement Agreement.

18 5. This Judgment incorporates and makes a part hereof the Settlement Agreement.

Objections and Opt-Outs

19 6. The Court finds that no objections have been submitted by Settlement Class
 20 Members. To the extent there were any objections to the Settlement, the Court has considered
 21 them and found that they are without merit and are overruled in all respects.
 22

7. The Court finds that two (2) Settlement Class Members submitted Exclusion Letters. Those persons (listed on Exhibit C to the Declaration of Cudworth, Dkt. 100) are excluded from the Class and are not bound by the Settlement or any of the terms or provisions contained therein.

Certification of the Settlement Class

8. For purposes of the Settlement and this Final Approval Order and Judgment, the Court hereby finally certifies the following Settlement Class:

All individuals and entities who sold stock in Smartsheet, Inc. in connection with the tender offer for stock of Smartsheet, Inc. dated June 2, 2017. Excluded from the Settlement Class are (1) the Defendants and all of their respective employees, officers, directors, agents, immediate family members, legal representatives, parent corporations, subsidiaries, controlled affiliates, insurers, guarantors, heirs, successors, and assigns, (2) all other Smartsheet shareholders who offered to purchase shares in the June 2017 tender offer, (3) Mark Mader, Brent Frei, Kara Hamilton, and Andrew Lientz, (4) the Judge presiding over this Action and all members of his family, and (5) persons who timely and validly requested exclusion from the Settlement Class.

This Settlement Class is certified for purposes of settlement only.

9. The Court determines that for settlement purposes, the Settlement Class meets all the requirements of Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, namely that the class is so numerous that joinder of all members is impractical; there are common issues of law and fact; the claims of the Plaintiffs are typical of absent class members; Plaintiffs will fairly and adequately protect the interests of the class, and have no interests antagonistic to or in conflict with the class, and have retained Class Counsel who are experienced and competent counsel to prosecute this matter; common issues predominate over any individual issues; and a class action is the superior means of adjudicating the controversy.

10. The Court grants final approval to the appointment of Named Plaintiffs James McMurchie, David Hanson and Maris Hanson as the Settlement Class Representatives pursuant

1 to Rule 23(a) of the Federal Rules of Civil Procedure. The Court finds that Named Plaintiffs are
2 similarly situated to absent Settlement Class Members; that Named Plaintiffs have Article III
3 standing to pursue their claims; that Named Plaintiffs are typical of the Class; and that Named
4 Plaintiffs have fairly and adequately represented the Settlement Class and will continue to do so.

5 11. The Court grants Final approval to the appointment of Plaintiffs' Counsel from
6 the firms Tousley Brain Stephens PLLC and McNaul Ebel Nawrot & Helgren PLLC as Class
7 Counsel pursuant to Fed. R. Civ. P. 23(g). The Court further appoints Jason T. Dennett of Tousley
8 Brain Stephens PLLC as Lead Class Counsel. The Court finds that these lawyers are experienced
9 and have adequately protected the interests of the Settlement Class and will continue to do so.

Notice to the Settlement Class

11 12. The Court finds that the form and content of the Email Notice and Long Form
12 Notice, and the procedures set forth in the Settlement for providing notice of the Settlement to
13 the Settlement Class, were in full compliance with the requirements of Federal Rules of Civil
14 Procedure 23(c)(2)(B) and 23(e); fully, fairly, accurately, and adequately advised members of
15 the Settlement Class of their rights under the Settlement; were reasonably calculated to provide,
16 and did provide, due and sufficient notice to the Settlement Class of the pendency of the
17 Litigation, certification of the Settlement Class for settlement purposes only, the existence and
18 terms of the Settlement, their right to exclude themselves, and their right to object to the
19 Settlement, attorneys' fees and expenses, and service awards; and to appear at the Final Approval
20 Hearing; afforded Settlement Class Members with adequate time and opportunity to file
21 objections to the Settlement and submit requests for exclusion; provided the best notice
22 practicable under the circumstances; and fully satisfied the requirements of due process, the
23 Federal Rules of Civil Procedure, and all other applicable laws.

13. The Court finds that Defendants have fully complied with the Notice requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

Other Provisions

14. Administration Expenses. Settlement Administrator's fees, as well as all other costs and expenses associated with Notice and Administration, are approved, and shall continue to be paid as provided in the Settlement Agreement.

15. **Dismissal with Prejudice.** Pursuant to the terms of the Settlement Agreement, the action is hereby **DISMISSED WITH PREJUDICE** on the merits, without costs or attorneys' fees to any Party except as provided under the terms of the Settlement Agreement, this Final Approval Order and Judgment, and the Court's concurrent Order Granting Class Counsel's Motion for Award of Attorneys' Fees and Expenses and Issuance of Service Awards.

16. Releases. The Releases set forth in Section 11 of the Settlement Agreement, together with the definitions contained in the Settlement Agreement relating thereto are expressly incorporated herein in all respects. The Releases are effective as of the Effective Date. Accordingly, this Court orders that:

- a. Without any further action by anyone, and subject to Paragraph 17 below, upon the Effective Date of the Settlement, the Named Plaintiffs and each of the Settlement Class Members, on behalf of themselves and their respective predecessors, successors, assigns, devisees, spouses, heirs, legatees, and agents, in their capacities as such, shall have, fully, finally, and forever released, relinquished, and discharged any and all of the Plaintiffs Released Claims against each of the Defendant Releasees, and shall forever be barred

1 and enjoined from prosecuting any and all of the Plaintiffs Released Claims
 2 against any of the Defendant Releasees.

3 b. Without further action by anyone, and subject to Paragraph 17 below, upon
 4 the Effective Date of the Settlement, the Defendants, on behalf of themselves
 5 and their respective predecessors, successors, assigns, devisees, spouses,
 6 heirs, legatees, and agents, in their capacities as such, shall have, fully, finally,
 7 and forever released, relinquished, and discharged any and all of the
 8 Defendants Released Claims against each of the Named Plaintiffs and
 9 Settlement Class Members, and shall forever be barred and enjoined from
 10 prosecuting any and all of the Defendants Released Claims against any of the
 11 Named Plaintiffs and Settlement Class Members.

12 17. Notwithstanding Paragraphs 16(a) – 16(b), nothing in this Final Approval Order
 13 and Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the
 14 Settlement Agreement or this Final Approval Order and Judgment.

15 18. Bar Order. The Court hereby permanently bars any and all claims for contribution
 16 against Defendant Releasees arising out of any Plaintiffs Released Claim where the alleged injury
 17 to the claiming person or entity arises from that person's or entity's liability to the Settlement
 18 Class or any Settlement Class Member (a) by any person or entity against any of the Defendant
 19 Releasees or (b) by any of the Defendant Releasees against any other person or entity, other than
 20 a person or entity whose liability has been extinguished by the Settlement; provided however that
 21 nothing in this paragraph shall give any rights to the Defendants or to any party that the
 22 Defendants caused to make payments to recover any funds deposited into the Settlement Fund.

1 19. Continuing Jurisdiction. Without affecting the finality of the Final Approval
2 Order and Judgment for purposes of appeal, the Court retains continuing and exclusive
3 jurisdiction over the Parties and all matters relating to the Settlement, including the
4 administration, interpretation, construction, effectuation, enforcement, and consummation of the
5 Settlement and this Final Approval Order and Judgment.

6 20. Binding Effect. The terms of the Settlement Agreement and of this Final Approval
7 Order and Judgment shall be forever binding on the Defendants, Plaintiffs, and all other
8 Settlement Class Members, as well as their respective successors and assigns.

9
10 IT IS SO ORDERED this 11th day of May, 2022.

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12 

13 RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE

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16 Presented by:

17 TOUSLEY BRAIN STEPHENS PLLC

18
19 By: s/ Jason T. Dennett

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